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No. 06-1680

In the Supreme Court of the United States

RICHARD ALLEN, COMMISSIONER,
ALABAMA DEPARTMENT OF CORRECTIONS, PETITIONER,

v.

DANIEL SIEBERT, RESPONDENT.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR THE STATES OF ILLINOIS, ARKANSAS, ARIZONA, COLORADO, FLORIDA, IOWA, MAINE, MISSISSIPPI, NEVADA, NEW HAMPSHIRE, NEW MEXICO, OHIO, OREGON, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, VIRGINIA AND WISCONSIN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

In *Pace v. DiGuglielmo*, this Court held that "a state post-conviction petition rejected by the state court as untimely" is, by definition, not "properly filed" for AEDPA tolling purposes. 544 U.S. 408, 410 (2005). In a 1-page precedential opinion, the Eleventh Circuit ruled below, without any analysis, that the holding in *Pace* simply does not apply where the pertinent state statute of limitations "operate[s] as an affirmative defense" rather than as a jurisdictional barrier to suit—even where, as here, the time bar is both invoked and enforced. The question presented is whether the Eleventh Circuit's judgment should be reversed because it impermissibly ignores the plain language of this Court's opinion in *Pace* and frustrates AEDPA's statutory purposes.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICI CURIAE* 1

STATEMENT 1

REASONS FOR GRANTING THE WRIT 6

I. By Reaffirming Its Prior Holding In *Siebert I* In A One-Page Decision Without Substantive Analysis, The Court Of Appeals Gave No Effect To This Court's Decision In *Pace*, Which Rejected The Rationale Of *Siebert I* 6

II. The Acknowledged Need For Certainty And Predictability In Limitations Periods Favors Both Granting The Certiorari Petition And Reversing The Eleventh Circuit's Judgment 10

III. The Eleventh Circuit's Holding Offends The Principles Of Finality And Comity That Drive Federal Habeas Review Of State Court Judgments 11

CONCLUSION 13

TABLE OF AUTHORITIES

Cases: **Page**

Artuz v. Bennett, 531 U.S. 4 (2000) ..... *passim*

Bell v. Cone, 535 U.S. 685 (2002) 12

Bell v. Thompson, 545 U.S. 794 (2005) 12

Board of Regents of Univ. of the State of N.Y. v. Tamanio, 446 U.S. 478 (1980) 10

Calderon v. Thompson, 523 U.S. 538 (2005) 12

Carey v. Saffold, 536 U.S. 214 (2002) 8

Day v. McDonough, 547 U.S. 198 (2006) 11, 12

Herman v. City of Chicago, 870 F.2d 400 (7th Cir. 1989) 10

Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co., 792 F.2d 341 (3d Cir. 1986) 10

McClesky v. Zant, 499 U.S. 467 (1991) 12

Owens v. Okure, 488 U.S. 235 (1989) 10

Pace v. DiGuglielmo, 544 U.S. 408 (2005) ..... *passim*

Rose v. Lundy, 455 U.S. 509 (1982) 12

Siebert v. Campbell, 334 F.3d 1018 (11th Cir. 2003) ..... *passim*

TABLE OF AUTHORITIES-Continued

Page

Siebert v. Campbell,
480 F.3d 1089 (11th Cir. 2007) ..... *passim*

Smith v. City of Chicago, 769 F.2d 408 (7th Cir. 1985) .. 11

Teague v. Lane, 489 U.S. 288 (1989) 12

Wainwright v. Sykes, 433 U.S. 72 (1977) 12

Wilson v. Garcia, 471 U.S. 261 (1985) 10

Statutes:

28 U.S.C. § 2244(d)(1) 2, 3, 7, 11

28 U.S.C. § 2244(d)(2) 2, 3, 7, 8, 11

42 U.S.C. § 1983 10

INTEREST OF THE *AMICI CURIAE*

This case asks whether a state post-conviction petition, filed beyond the time allowed by state law and dismissed as untimely by the state courts, nevertheless should be regarded as "properly filed" and therefore capable of tolling the one-year period for filing a federal habeas corpus petition, so long as the state limitations period is not jurisdictional as a matter of state law.

The *Amici* States have a powerful interest in the resolution of this question. As this Court has repeatedly affirmed, the rights of state court defendants to federal habeas review must be balanced against a State's interest in the finality of its criminal convictions. Reflecting these competing concerns, the Antiterrorism and Effective Death Penalty Act ("AEDPA"), includes a one-year limit on a state defendant's ability to pursue federal habeas relief, but tolls the running of that period during the pendency of a state defendant's "properly filed" application for state post-conviction review. The rule announced by the Eleventh Circuit in this case would deny the many States whose limitations periods are not clearly jurisdictional the right to finality by allowing the "state prisoner [to] toll the statute of limitations at will simply by filing untimely state post-conviction petitions," *Pace v. DiGuglielmo*, 544 U.S. 408, 413 (2005), precisely what this Court sought to avoid with its decision in *Pace*.

STATEMENT

1. In 1987, a jury convicted Daniel Siebert of capital murder committed in the course of a robbery. Pet. App. 3a. The Alabama Court of Criminal Appeals and the Alabama Supreme Court affirmed the conviction, and a certificate of judgment issued on May 22, 1990. *Id.*

2. On August 25, 1992, Siebert filed a petition for state post-conviction relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Pet. App. 3a. In an amended answer, the State argued that Siebert's Rule 32 petition was untimely because it was filed beyond the two-year limitations period then in place under Rule 32.2(c). Pet. App. 4a. The Alabama trial court denied relief on this ground and on the merits, *id.*, but the Alabama Court of Criminal Appeals affirmed solely because Siebert's petition was untimely. *Id.* at 13a. The Alabama Supreme Court denied Siebert's certiorari petition on September 15, 2000. *Id.* at 4a.

3. Siebert filed his federal habeas corpus petition on September 14, 2001. The State moved to dismiss the petition as untimely under 28 U.S.C. § 2244(d)(1), which gives a state defendant one year to seek habeas relief after his state conviction becomes final. Pet. App. 4a.[1] Siebert did not dispute that he failed to file his petition within the one-year limit. *Id.* at 6a n.7. Instead, he claimed that the one-year limitations period was tolled while his untimely Rule 32 petition was pending in the Alabama courts. Siebert founded this claim on 28 U.S.C. § 2244(d)(2), which exempts from the one-year period "[t]he time during which a properly filed application for State post-conviction or other collateral review * * * is pending."

The district court rejected Siebert's tolling argument, holding that the statutory tolling provision did not apply, and

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[1] Siebert's conviction became final for purposes of the federal limitations period on November 5, 1990, nearly six years before AEDPA became law. Pet. App. 6a. Accordingly, Siebert's time began to run when AEDPA went into effect, and expired one year later, on April 23, 1997, more than four years before he filed his federal habeas petition. *Id.*

dismissed Siebert's petition as untimely. Pet. App. 13a, 23a. The court recognized that the timeliness inquiry in Siebert's case turned on whether his belated Rule 32 petition was "properly filed" for purposes of § 2244(d)(2)'s tolling provision. Pet. App. 5a-6a. Following *Artuz v. Bennett*, 531 U.S. 4 (2000), in which this Court expressly identified compliance with "'the time limits upon [the] delivery'" of a state post-conviction petition as a requirement for a "properly filed" petition, the Court held that it was not "properly filed." Pet. App. 8a (quoting *Artuz*, 531 U.S. at 8) (emphasis omitted). "[T]he state courts determined conclusively as a matter of state law that [Siebert's] Rule 32 petition was untimely"; accordingly, the district court was "compelled * * * to conclude that the untimely state petition was not a 'properly filed application' capable of tolling the limitation period and to dismiss petitioner's habeas petition as time-barred under § 2244(d)(1)." Pet. App. 13a.

4. The Eleventh Circuit reversed. Pet. App. 25a-48a ("*Siebert I*"). The court acknowledged that *Artuz* required state defendants to comply with "the time limits upon * * * delivery" of a state post-conviction petition in order to satisfy "proper filing" requirements, but speculated that this language in *Artuz* may have referenced, not statutes of limitations, but "deadlines governing service upon an opposing party" or to "the hours of business maintained by a clerks' office." *Id.* at 33a-34a. The court distinguished "between conditions to filing" a state post-conviction petition, which (according to the court) a petitioner must satisfy to qualify for tolling under § 2244(d)(1), and "conditions to obtaining relief," which a petitioner need not meet to toll the habeas limitations period. *Id.* at 33a. The court concluded that state time-bars, at least where they are not mandatory in all circumstances, belong to the latter group, for "[c]ompliance with a statute of limitations is not generally treated as a precondition to a suit's commencement, but rather as a condition that must be satisfied to win relief on a particular

claim (or all claims)." *Id.* at 34a. The court held that this was true of Alabama's two-year limitations period, in particular, because application of that time bar was "discretionary" rather than either "jurisdictional" or "a matter of state entitlement." *Id.* at 35a-44a. In the Eleventh Circuit's analysis, the "discretion left to Alabama courts to enforce the time bar compels the conclusion that timeliness was not a prerequisite to filing *per se*," making Alabama's time bar "a condition to obtaining relief rather than a condition to filing." *Id.* at 44a. Because it determined that AEDPA's one-year time bar was tolled while Siebert's untimely Rule 32 petition was pending in the Alabama courts, the court concluded that his habeas petition was timely. *Id.* at 47a-48a.

5. While the case was pending on remand, this Court issued its decision in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), which specifically held that state law "time limits" on post-conviction applications, "no matter their form," are "'filing' conditions." *Id.* at 417. The State therefore again moved to dismiss Siebert's petition as untimely. Pet. App. 51a.

6. On February 6, 2006, the district court dismissed Siebert's habeas petition under the rule announced in *Pace*. *Id.* at 49a-66a. In *Pace*, the district court explained, "the Supreme Court had the opportunity to expound on *Artuz* in the specific context of time limits for filing," and "the Court held that a post-conviction petition rejected by the state courts as untimely filed under state law is not considered 'properly filed' within the meaning of the AEDPA's tolling provision." *Id.* at 55a. Moreover, *Pace* rejected the theory that "'judicially reviewable exceptions'" to a state time bar make compliance with that bar any less essential for a "properly filed" petition: "The Court determined that, regardless of whether the state's statutory scheme provided exceptions to the post-conviction petition deadline, there exist 'no grounds for treating the two differently.'" *Id.* at 56a (quoting *Pace*, 544 U.S. at 412, 413).

The district court understood *Pace* to require that a state post-conviction petition is not "properly filed" for AEDPA tolling purposes "so long as the state court has deemed it untimely." Pet. App. 58a. The district court emphasized that "[n]othing in *Pace* or § 2244(d) * * * says that only 'jurisdictional' rules constitute 'conditions to filing,'" as the Eleventh Circuit held in *Siebert I*, and that *Pace* expressly "identified Alabama's time bar," "as one of the very types of rules that constitute 'conditions to filing.'" *Id.* at 61a. The district court concluded that, because the Alabama "courts determined conclusively as a matter of state law that the Rule 32 petition was untimely at the time it was filed," *id.* at 59a, the petition did not toll the one-year period for seeking federal *habeas* relief. The district court therefore dismissed Siebert's federal petition. *Id.* at 65a-66a.

7. In a one-page, published decision, the Eleventh Circuit again reversed. *Id.* at 1a ("*Siebert II*"). The court adhered to its prior decision, notwithstanding this Court's intervening decision in *Pace*, on the theory "that *Pace* did not address the question presented in *Siebert I*, to wit: a statute of limitations that operated as an affirmative defense." *Id.* The court thus reaffirmed its distinction from *Siebert I* between time bars that are jurisdictional and those that are not. In the Eleventh Circuit, a state post-conviction petition filed in violation of the state law limitations period is "properly filed" within the meaning of the federal habeas law, even where, as here, "the state courts determined conclusively as a matter of state law that the Rule 32 petition was untimely at the time it was filed," so long as state law does not hold the time bar to be jurisdictional. *Id.* at 59a.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari—and either summarily reverse the Eleventh Circuit's judgment or set the case for full briefing and argument—because the court of appeals "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). As ably set forth in the certiorari petition, the rule announced by the Eleventh Circuit in this case cannot be squared with *Pace*'s categorical pronouncement that "a state post-conviction petition rejected by the state court as untimely" is not "properly filed," 544 U.S. at 410, or with *Pace*'s specific reference to Alabama's Rule 32 time bar as a requirement that petitioners must satisfy to toll AEDPA's filing deadline.

The *amici* states write separately in support of Alabama's petition and to emphasize three points. First, *Siebert I* not only reflects a misreading of *Artuz*, but in reaffirming *Siebert I* in *Siebert II*, the Eleventh Circuit overlooked the fact that this Court's intervening decision in *Pace* rejected the stated grounds for the holding in *Siebert I*. Second, the Eleventh Circuit's decision sows confusion in an area where the need for certainty and predictability is acute—the timing requirements for seeking judicial relief. Third, the Eleventh Circuit's opinion offends the principles of finality and comity that underlie federal habeas review of state-court judgments. For these reasons, and for the reasons set forth in Alabama's petition, this Court should grant certiorari and summarily reverse the Eleventh Circuit's judgment or set the case for briefing and argument.

I. By Reaffirming Its Prior Holding In *Siebert I* In A One-Page Decision Without Substantive Analysis, The Court Of Appeals Gave No Effect To This Court's Decision In *Pace*, Which Rejected The Rationale Of *Siebert I*.

A person in custody pursuant to a state court conviction has one year after his conviction becomes final within which to file

a federal habeas petition. 28 U.S.C. § 2244(d)(1). The one-year period is tolled while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." *Id.* § 2244(d)(2). This Court addressed the meaning of the "properly filed" limitation in *Artuz*, holding that for a state post-conviction petition to be "properly filed," "its delivery and acceptance [must be] in compliance with the applicable laws and rules governing filings," which "usually prescribe, for example, the form of the document, *the time limits upon its delivery*, the court and office in which it must be lodged, and the requisite filing fee." *Id.* at 364 (emphasis added). It is not enough that the court clerk accept the submission; a state application is not properly filed when "an application is erroneously accepted by the clerk of a court lacking jurisdiction, or is erroneously accepted without the requisite filing fee." *Ibid.* (emphasis added).

In *Siebert I*, after determining that compliance with Alabama's two-year period for filing Rule 32 petitions was not a jurisdictional prerequisite under state law, the Eleventh Circuit concluded that the time bar was a "condition to obtaining relief" rather than a "condition to filing." 334 F.3d at 1030. The court reasoned that the two-year limitations period included exceptions, meaning the state courts enjoyed some discretion to excuse tardy filings after considering factors related to their merits. *Id.* at 1029-1032. The Eleventh Circuit explained away *Artuz*'s specific reference to "time limit[s]" on two grounds: (1) on its facts, *Artuz* did not involve the timeliness of a state application; and (2) *Artuz* elsewhere reserved the question of "whether the existence of certain exceptions to a timely filing requirement can prevent a late application from being considered improperly filed." *Siebert I*, 334 F.3d at 1024 (citing *Artuz*, 531 U.S. at 9 n.2).

But these points, essential to the court's decision in *Siebert I*, did not survive *Pace*. Unlike *Artuz*, *Pace* involved an

untimely state application, and asked specifically whether that application was "properly filed" within AEDPA's meaning. *See Pace*, 544 U.S. at 410. And *Pace* addressed the question left open in *Artuz*: whether the fact that state law recognizes exceptions to the strict application of a post-conviction time bar means that late filings—even filings that the state courts reject solely because they are late—are nevertheless "properly filed" for purposes of tolling the federal filing deadline. *Id.* at 413. *Pace* answered that question in the negative: "When a post-conviction petition is untimely under state law, that [is] the end of the matter for purposes of § 2244(d)(2)." *Id.* at 414 (internal quotation marks omitted). In so doing, the Court expressly rejected the position that "conditions that require some *judicial* consideration" cannot serve as conditions to proper filing. *Id.* at 414-415 (emphasis in original). Further, the Court reaffirmed its pronouncement years earlier in *Carey v. Saffold*, 536 U.S. 214, 226 (2002), that if a state court clearly ruled that a post-conviction filing was untimely "'*that would be the end of the matter* [for tolling purposes], regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits.'" *Pace*, 544 U.S. at 414 (quoting *Saffold*, 536 U.S. at 226) (emphasis added by *Pace* Court).

In short, *Pace* did away with the essential underpinnings of *Siebert I*. *Pace* leaves no doubt that *Artuz*'s reference to "time limit[s]" as a requirement for proper filings is binding, contrary to *Siebert I* 's suggestion that this illustration was non-binding dicta. Compare *Siebert I*, 334 F.3d at 1023-24 (stating that *Artuz* did not directly address noncompliance with a state post-conviction statute of limitations), with *Pace*, 544 U.S. at 413 ("[I]n *Artuz* * * *, we held that time limits on post-conviction petitions are 'condition[s] to filing," such that an untimely filed petition would not be deemed 'properly filed.'"). And *Pace* held that adherence to state time limits on post-conviction submissions is essential for a proper filing, even if judges play

a role in determining whether a particular petition is timely. After *Pace*, it was no longer possible to maintain, as the Eleventh Circuit had in *Siebert I*, that a state court's "exercise of discretion to enforce or not enforce a post-conviction time bar itself constitutes a sufficient quantum of judicial review to effectively ratify the form and manner of a petition's filing"—meaning such a submission was "properly filed" within the meaning of AEDPA. 334 F.3d at 1032. Quite simply, *Pace*—upon which the district court based its second dismissal and upon which petitioner relied before the district court and on appeal—undercut the basis for the Eleventh Circuit's decision in *Siebert I*.

The Eleventh Circuit nevertheless reaffirmed its decision in *Siebert I* in a one-page, precedential decision that failed to account for *Pace* as intervening precedent. Rather, the *Siebert II* court distinguished *Pace* on the ground that it involved a time bar that was "jurisdictional" under state law. 480 F.3d at 1090. Despite its recognition that the question of exceptions had been reserved in *Artuz*, in *Siebert II*, the Eleventh Circuit made no effort to explain its original rationale in light of *Pace*. This Court's holding in *Pace* allowed for no distinction between jurisdictional and non-jurisdictional statutes of limitations, stating unequivocally that "time limits, *no matter their form*, are 'filing' conditions." *Pace*, 544 U.S. at 417 (emphasis added). In sum, the Eleventh Circuit boldly reaffirmed its decision in *Siebert I*, notwithstanding that *Pace* is irreconcilable with that decision's stated rationale, and on grounds that are themselves irreconcilable with *Pace*. Certiorari is warranted on this ground alone. See Sup. Ct. R. 10 (one consideration for granting certiorari is that a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court).

II. The Acknowledged Need For Certainty And Predictability In Limitations Periods Favors Both Granting The Certiorari Petition And Reversing The Eleventh Circuit's Judgment.

The Eleventh Circuit's incompatibility with *Pace* is not the only factor favoring certiorari review in this case. The fact that the decision below adds uncertainty and unpredictability to the AEDPA time bar also counsels for Supreme Court review.

Correction of the Eleventh Circuit's error is particularly crucial because of the important function played by statutes of limitations. This Court has repeatedly emphasized the importance of the policies underlying statutes of limitations. In *Board of Regents of Univ. of the State of N.Y. v. Tamanio*, 446 U.S. 478, 487 (1980), this Court stated that "[s]tatutes of limitations are not mere technicalities" but, "[o]n the contrary, they have long been respected as fundamental to a well-ordered judicial system." Consistent with this concern for the proper implementation of statutory time bars, this Court has at least twice bemoaned the time-consuming, wasteful litigation and the potentially harmful confusion caused by ambiguities in the limitations period applied to claims under 42 U.S.C. § 1983. *Owens v. Okure*, 488 U.S. 235, 240 (1989); *Wilson v. Garcia*, 471 U.S. 261, 275 (1985). As the Court observed in *Wilson*, "the legislative purpose to create an effective remedy for the enforcement of Federal civil rights is obstructed by uncertainly in the applicable statute of limitations, for scarce resources must be dissipated by useless litigation on collateral matters." 471 U.S. at 275; *see also Herman v. City of Chicago*, 870 F.2d 400, 402 (7th Cir. 1989) (clear time-bar rules are essential, for they avoid needless "byplay about limitations and allow[] the parties and the courts to concentrate their energies on the merits"); *Malley-Duff & Assocs., Inc. v. Crown Life Ins. Co.*, 792 F.2d 341, 349 (3d Cir. 1986) (noting that effectiveness of civil RICO statute is substantially thwarted by uncertainty in applicable

statute of limitations); *Smith v. City of Chicago*, 769 F.2d 408, 410-11 (7th Cir. 1985) (courts should establish understandable and simple rules for timely filing of litigation).

Without this Court's intervention, the Eleventh Circuit rule distinguishing between jurisdictional and non-jurisdictional rules will be a source of confusion. Petitioners seeking the benefit of its more relaxed filing requirement can be expected to invoke *Siebert I* and *II* in other federal circuits, in an effort to cast doubt on *Pace*'s otherwise clear pronouncement that "[w]hen a post-conviction petition is untimely under state law, that [is] the end of the matter for purposes of § 2244(d)(2)." 544 U.S. at 414 (internal quotation marks omitted)

Moreover, by making a time bar's "jurisdictional" character the lynchpin of its rule, the Eleventh Circuit approach frequently leaves parties without any way to know whether an untimely post-conviction filing tolls AEDPA's one-year limitations period. As petitioners point out (at pp. 28-29 of the petition), courts in many States have yet to rule definitively whether their time bars are jurisdictional. Criminal defendants and prosecutors in these States are left to speculate over when the one-year period for seeking habeas relief expires. In contrast, the standard announced in *Pace*—that "a state post-conviction petition rejected by the state court as untimely" is not "properly filed" within the meaning of 28 U.S.C. § 2244(d)(1)—leaves no doubt that out-of-time state court petitions, whatever their effect on state court jurisdiction as a matter of state law, cannot prolong the federal filing period.

III. The Eleventh Circuit's Holding Offends The Principles Of Finality And Comity That Drive Federal Habeas Review Of State Court Judgments.

Federal collateral review of state court judgments necessarily implicates comity and finality. *Day v. McDonough*, 547 U.S. 198, 214 (2006) (Scalia, *J.*, dissenting) (*citing*

McClesky v. Zant, 499 U.S. 467, 489-91 (1991), *Wainwright v. Sykes*, 433 U.S. 72, 80-81 (1977), *Teague v. Lane*, 489 U.S. 288, 308 (1989), and *Rose v. Lundy*, 455 U.S. 509, 515 (1982)); *see also Bell v. Thompson*, 545 U.S. 794, 812-14 (2005) (reversing court of appeals whose decision to withhold mandate did not accord appropriate level of deference to state-court judgment). Even before AEDPA, this Court emphasized that "[i]n light of 'the profound societal costs that attend the exercise of habeas jurisdiction, [the Court has] found it necessary to impose significant limits on the discretion of federal courts to grant habeas relief'—limits that "reflect [the Court's] enduring respect for 'the State's interest in the finality of convictions that have survived direct review within the state court system.'" *Calderon v. Thompson*, 523 U.S. 538, 554-55 (2005). "Finality is essential to both the retributive and the deterrent functions of criminal law," "enhances the quality of judging," and "serves well to preserve the federal balance." *Id.* at 555. And in passing AEDPA, Congress sought to place further limits on habeas review. *See Bell v. Cone*, 535 U.S. 685, 693 (2002) (AEDPA "modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law."). Among these new limits was the statute of limitations at issue here. *Day*, 547 U.S. at 202 n.1.

By reading into that statute of limitations a distinction not contemplated by this Court in *Pace* or *Artuz*, the Eleventh Circuit has opened the door for parties wishing to prolong or to avoid AEDPA's two-year limit. Moreover, its rule—hinging as it does on the sometimes ill-defined effect of late filings on subject matter jurisdiction—trenches on principles of comity and finality by making proper application of the two-year limit uncertain in many jurisdictions, where it promises to be the source of additional, wasteful litigation. For this reason also, this Court should grant certiorari.

CONCLUSION

The Court should grant the petition for a writ of certiorari and summarily reverse the Eleventh Circuit's judgment or, in the alternative, set the case for briefing and argument.

Respectfully submitted.

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Petition for Rehearing Brief Unavailable for Filming at this Time